IN THE HIGH COURT OF BOMBAY AT GOA
****

WRIT PETITION NO. 131 OF 1997

P. P. Kumbhare, aged
46 years, holding the
post of Deputy Director
(Agriculture ad-hoc,),
r/o Bainguinim, Old Goa,
Tiswadi, Goa. ...Petitioner

Versus

1. Government of Goa, through
the Chief Secretary, having
his office at Secretariat,
Panaji,

2. The Secretary (Agriculture)
Government of Goa, having his
office at Secretariat, Panaji,

3. The Goa Public Service
Commission, through its
Chairman, having office at
EDC House, Dr. Atmaram Borcar
Road, Panaji,

4. Shri K. G. Sharma,
Deputy Director of
Agriculture, holding charge of
Director of Agriculture,
Directorate of Agriculture,
Vidyut Bhavan, Panaji,

5. Shri Ali Ahmed, Deputy
Director of Agriculture
on deputation as General
Manager, Goa Horticulture
Corporation, EDC House,
Dr. Atmaram Borcar Road,
Panaji,

6. Shri K. A. Kazi, Deputy
Director of Agriculture,
Directorate of Agriculture,
Vidyut Bhavan, Panaji,

7. Shri W. M. Khade,
Assistant Director of
Agriculture, Directorate of
Agriculture, Vidyut Bhavan,
Panaji,

8. Shri G. K. Patil, Assistant
Director of Agriculture,

Directorate of Agriculture,
Vidyut Bhavan, Panaji,

9. Shri Satish S.P.Tendulkar,
Asst. Director of Agriculture,
Directorate of Agriculture,
Vidyut Bhavan, Panaji and

10. Shri R. G. Joshi, Deputy
Director of Agriculture,
Vidyut Bhavan, Panaji. ...Respondents.

Shri D. B. Ambekar, advocate for the petitioner.

Shri A.N.S. Nadkarni, Advocate General with Shri H. R. Bharne, Government Advocate for respondent nos.1 and 2.

Shri A.N.S. Nadkarni, Advocate General with Shri H. D. Naik, Advocate, for respondent no.3.

Shri M. B. D'Costa, Senior Counsel with Shri J. A. Lobo, advocate for respondent nos. 5 to 9.

CORAM : A. M. KHANWILKAR &
P. V. HARDAS, J.

DATE OF RESERVING THE JUDGMENT : 2nd December, 2003.

DATE OF PRONOUNCING THE JUDGMENT : 8th December, 2003.

JUDGMENT (Per Khanwilkar, J.)

This Writ Petition under Article 226 of the Constitution of India takes exception to the Order dated 6th March, 1997, passed by the Director of Agriculture and Ex-officio Joint Secretary to the Government of Goa (at page 47 of the paper book) and for further direction to respondent nos. 1 and 2 to regularise the petitioner as Deputy Director of Agriculture, with effect from 26th March, 1997 - the date on which the other eight Deputy Directors of Agriculture were regularised. Briefly stated, the petitioner came to be appointed as Assistant Agriculture Officer (Grade I) with effect from 20th March, 1982, and posted at Mapusa, Goa. The petitioner was appointed to the said post as Scheduled Caste

candidate in reserved category. It is not in dispute that the petitioner migrated to Goa from Nagpur in 1982, having been selected for the said post which was filled in on All India Selection Basis. It is also not in dispute that the petitioner belongs to community which was and is notified as Scheduled Caste in the State of Maharashtra as well as in the State of Goa. The petitioner was thereafter promoted in the reserved category to the post of Assistant Director of Agriculture on ad-hoc basis sometime on 17th January, 1992. The petitioner was further promoted on ad-hoc basis to the post of Deputy Director of Agriculture (Group 'A '). In the meantime, the Government of Goa issued Office Memorandum dated December, 8, 1994, clarifying the position with regard to the issue as to whether a candidate belonging to Scheduled Caste/Scheduled Tribe and migrated from another State could be entitled to be appointed in the Government of Goa against the vacancy reserved for such categories. The State of Goa on consideration of the decision of the Constitution Bench of the Apex Court has issued the Office Memorandum clearly explaining the position that the Government has decided that the benefits of reservation for Scheduled Caste in the State of Goa shall not be extended to the Scheduled Caste migrated from other States. The Government was, thereafter, required to issue certain clarification which was done by Office Memorandum dated 13th July, 1995. The Government was actively considering the issues, inter alia, as to from what date the decision taken by the Government as reflected in the

Office Memorandum dated December, 8, 1994, was to be made applicable; whether the Scheduled Caste Government employees earlier migrated from other States, who are presently in Government service can be given the benefit of reservation so far as future promotion is concerned; Some Scheduled Caste officers from outside States have been recruited to different posts in this administration by virtue of All India advertisements, are they to be considered as migrants? While considering the above issues, the Government has issued point-wise clarification. Insofar as the first aspect is concerned, the Government took a conscious decision to make the Office Memorandum effective from the date of issue (i.e. from 8th December, 1994). Insofar as the second aspect, the Government has decided that the Scheduled Caste Government employees earlier migrated from other States and who are presently in Government service, should not be granted the benefit of reservation so far as their promotion is concerned and with regard to the last aspect, it has been decided that some Scheduled Caste officers from outside the State recruited to different posts in the administration by virtue of All India advertisements should be considered as migrated. It is relevant to note that the petitioner's appointment was questioned by one Satish S. P. Tendulkar (respondent no.9 herein), by way of Writ Petition no.260 of 1996. The said Writ Petition came to be disposed of on 7th October, 1996, in view of the statement made on behalf of the Director of Agriculture that the case of the writ petitioner therein

would be considered alongwith the case of the petitioner herein by the Review Departmental Promotion Committee. The petitioner thereafter made representation on 4th December, 1996, to the competent authority. However, the petitioner was informed by the impugned communication dated 6th March, 1997, that his name was deleted from the Government order dated 15th June, 1995 with immediate effect, which decision was taken after the review undertaken by the Departmental Promotion Committee. The impugned Order further records that the petitioner will be deemed to have continued as Assistant Director of Agriculture on ad-hoc basis until further orders. Later on, the petitioner was promoted as Assistant Director of Agriculture, once again on regular basis, whereas eight other Assistant Directors came to be promoted to the post of Deputy Director of Agriculture on regular basis in March, 1997. The petitioner, therefore, questioned the said action and has prayed for further direction to give parity alongwith the other eight Deputy Directors of Agriculture, who have been regularized with effect from 26th March, 1997.

2. This petition is resisted by the respondent nos. 1 and 2 by filing affidavit of Shri K. G. Sharma, Assistant Director of Agriculture dated 17th June, 1997, whereas the respondent no.3, Commission, has also resisted this petition by filing affidavit dated 19th June, 1997, sworn by Shri K. M. Nambiar, Under Secretary to the Goa Public Service Commission. In this affidavit, it is asserted

that the promotion of the petitioner to the post of Deputy Director of Agriculture in July, 1996, was on ad-hoc basis and that is not in conformity with the law expounded by the Apex Court. It is further asserted that the Commission was never consulted before promoting the petitioner to the post of Assistant Director, vide Order dated 17th January, 1992. The affidavit then mentions the details as to how the vacancies arose from 1980 to 1993, out of which one vacancy of 1992 was reserved for Scheduled Caste candidate. The Departmental Promotion Committee ("D.P.C." for short), had met on 14th December, 1994 and considered eligible officers coming in the zone of consideration for each year's vacancies. The petitioner did not come in the zone of consideration for 1980, 1981, 1984 and 1987, whereas the petitioner was considered alongwith other eligible officers for each year's vacancies of 1991 - 1992. The petitioner did not get placing in the select list for the vacancies of 1991. The petitioner was recommended for reserved vacancy (Scheduled Caste) for the year 1992. The affidavit further asserts that the petitioner was the only officer reported by the Government as belonging to the Scheduled Caste community and, as such, the D.P.C. recommended his name for promotion as Assistant Director of Agriculture against the reserved vacancy of Scheduled Caste of 1992, assuming that he was of Goan origin. It is stated that the decision taken by the Government vide Order dated 15th June, 1995, was on the said assumption. The affidavit then states that the petitioner

was promoted to post of Deputy Director of Agriculture on ad hoc basis vide Order dated 30th July, 1996. However, the Commission was not a party to this ad-hoc appointment as the Commission was never consulted in that regard. The affidavit also asserts that the Commission was not a party in Writ Petition No.260 of 1996 filed by respondent no.9 herein and that the petitioner is not entitled to the benefit of reservation as he is not of Goan origin.

3. We have perused the pleadings and examined the rival submissions canvassed across the Bar. On the basis of the pleadings and submissions canvassed before us, the principal question that arises is: Whether the petitioner, who is originally from Maharashtra and belongs to the community which is notified as Scheduled Caste in the State of Maharashtra, could avail of the reservation of a post in the State of Goa? The argument on behalf of the petitioner is that the petitioner belongs to a community which is not only notified as Scheduled Caste in Maharashtra, but is also notified as Scheduled Caste in relation to the State of Goa. On this premiss, the learned counsel contends that the petitioner was entitled to be appointed against the reserved post for Scheduled Caste. This submission, in our view, clearly overlooks the exposition in the decision of the Constitution Bench of the Apex Court in **Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College & Ors.**, as reported in 1990 (3) SCC 130. The said decision clearly takes the

view that a candidate recognised as a member of the Scheduled Tribe/Scheduled Caste in his original State, on his migration to another State, is not entitled to get the benefit of reservation. This decision has been further affirmed and followed by another Constitution Bench of the Apex Court in the case of **Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes In the State of Maharashtra & Anr. vs. Union of India & Anr.,** reported in (1994) 5 SCC 244. In this subsequent judgment in paragraphs 15 and 16, the Apex Court has analysed the basis on which the observations made in the earlier decision in **Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College & Ors.** (supra), will have to be understood. It will be appropriate to advert to the following dictum:-

> "..... At the same time it must also be realised that the language of clause (1) of both the Articles 341 and 342 is quite plain and unambiguous. It clearly states that the President may specify the castes or tribes, as the case may be, in relation (to) each State or Union Territory for the purposes of the Constitution. It must also be realised that before specifying the castes or tribes under either of the two articles the President is, in the case of a State, obliged to consult Governor of that State. Therefore, when a class is specified by the President, after consulting the Governor of State A, it is difficult to understand how that specification made 'in relation to that State' can be treated as specification in relation to any other State whose Governor the President has not consulted. True it is that this specification is not only in relation to a given State whose Governor has been consulted but is 'for the purposes of this Constitution' meaning thereby the various provisions of the Constitution which deal with Scheduled

Castes/Scheduled Tribes. ....."

"Therefore, said the Constitution Bench, the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the xtent they are entitled to in order to become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. The Constitution Bench summed up as under:

> 'In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem. If one bears this basic approach in mind, then the determination of the controversy in the instant case does not become difficult.'." (Emphasis supplied)

It will be useful to also advert to the dictum in paragraph 16 of the same decision of the Apex Court as below:-

> "Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the consideration on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State 'for the purposes of this Constitution'." (Emphasis supplied)

In other words, the Constitution Bench has repelled the argument which is once again canvassed before us on behalf of the petitioner. The learned counsel for the petitioner, however, taking clue from the observations in paragraph 16 in the case of **Action Committee vs. Union of India** (supra), contends that the petitioner belongs to a caste which is not only common by name and notified as Scheduled Caste in Maharashtra, but is also so notified in the State of Goa. According to him, there is close affinity between the named caste in the State of Maharashtra and the same name in the State of Goa, coupled with the fact that both States are neighbouring States, for which reason although the petitioner belongs to the State of Maharashtra, he will be entitled to protection even in the State of Goa. However, as observed earlier, we see no reason to countenance this submission as the issue is squarely answered by the Constitution Bench of the Apex Court referred to above. Learned counsel for the petitioner however, placed reliance on the subsequent decision of the Apex Court in the case of **M.C.D. vs. Veena & Ors.**, reported in (2001) 6 SCC 571. However, in our opinion, the issue considered in the said decision was as to whether the certificates of candidates belonging to the backward classes in States other than Delhi, would hold good for the purpose of recruitment to the post of primary and nursery teachers in Municipal Corporation of Delhi in the national capital territory of Delhi. Besides, even this judgment of the Division Bench of the Apex Court, in

paragraph 6 thereof, has followed the dictum of the Constitution Bench in the aforesaid two cases. In our view, therefore, this decision will be of no avail to the petitioner.

4. Learned counsel for the petitioner then placed reliance on the decision of the Apex Court reported in (1980) 1 SCR 1135 in **Dadji alias Dina vs. Sukhdeobabu & Ors.** In our view, even this decision will be of no avail to the petitioner because the issue in the present case as to whether the petitioner who belongs to Scheduled Caste notified in Maharashtra and incidentally is also notified in the State of Goa, would be entitled to avail the benefit of reservation in the later State. That issue, in our view stands concluded by the decision of the Constitution Bench in the case of **Action Committee** (supra).

5. Learned counsel for the petitioner next contends that the vacancy in respect of which the petitioner seeks relief had arisen in the year 1992 and the same will have to be filled in accordance with the rules and practice which prevailed during the relevant time. He submits that in view of the Government Circular dated 8th February, 1988, the petitioner was entitled to enjoy all the benefits of the reservation as provided in the rules.

6. Learned counsel has placed reliance on an

unreported decision of our High Court in Writ Petition No. 364 of 1997 in the case of **Dr. A. J. Varghese & Anr. vs. State of Goa & Ors.**, decided on 25th June 2003, to contend that the rules as applicable on the date of the vacancy will govern the petitioner's case. Ordinarily, there can be no difficulty in accepting this proposition. However, in the present case the question is one of eligibility in the context of the provisions of Article 341 of the Constitution of India. As mentioned earlier, the Constitution Bench of the Apex Court in the case of **Marri Chandra Shekar Rao** (supra) in the year 1990 expounded the legal position and that became the law, having regard to the mandate of Article 141 of the Constitution of India. In other words, with the said decision in 1990 which has been affirmed by another Constitution Bench in 1994 in the case of **Action Committee** (supra), the position that emerges is that at least on and from 1990 a person who belonged to reserved category in one State will not be entitled to claim benefit of reservation in another State. Understood thus, although the rules as were prevalent in 1992 may be reckoned for considering the case of the petitioner for promotion, however, the law as enunciated by the Apex Court in 1990 will and ought to be applied proprio vigore, to all appointments to be made against the vacancy arising in the year 1992. A priori, the petitioner will not be entitled to be appointed against the reserved post in the State of Goa, although the petitioner may be ordinarily resident of Goa since 1982, being a migrated

person from the State of Maharashtra and his migration not being involuntary.

7. Learned counsel for the petitioner drew our attention to another unreported decision of this Court in Writ Petition No.256 of 1997 decided on 17th December, 1997 in the case of **Kum. Bhagyashree Shripad Madbhavikar vs. State of Goa & Ors.**, and in his usual fairness accepts that this decision would squarely cover the case of the petitioner herein against him. However, for the reasons already recorded above, which are based on the dictum of the decision of the Constitution Benches of the Apex Court, we find no substance in this Writ Petition.

8. Accordingly the Writ Petition fails and the same is dismissed with no order as to costs.

A. M. KHANWILKAR, J.

P. V. HARDAS, J.

mc.